

Nuclear Regulatory Commission

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conclusions of law, briefs and a proposed form or order of decision within the time provided by the following subparagraphs, except as otherwise ordered by the presiding officer:

(1) The party who has the burden of proof shall, within thirty (30) days after the record is closed, file proposed findings of fact and conclusions of law and briefs, and a proposed form of order or decision.

(2) Other parties may file proposed findings, conclusions of law and briefs within forty (40) days after the record is closed. However, the staff may file such proposed findings, conclusions of law and briefs within fifty (50) days after the record is closed.

(3) A party who has the burden of proof may reply within five (5) days after filing of proposed findings and conclusions of law and briefs by other parties.

(b) Failure to file proposed findings of fact, conclusions of law or briefs when directed to do so may be deemed a default, and an order or initial decision may be entered accordingly.

(c) Proposed findings of fact must be clearly and concisely set forth in numbered paragraphs and must be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law must be set forth in numbered paragraphs as to all material issues of law or discretion presented on the record. An intervenor's proposed findings of fact and conclusions of law must be confined to issues which that party placed in controversy or sought to place in controversy in the proceeding.

[27 FR 377, Jan. 13, 1962, as amended at 28 FR 10154, Sept. 17, 1963; 35 FR 11459, July 17, 1970; 43 FR 17802, Apr. 26, 1978; 46 FR 30331, June 8, 1981; 54 FR 33182, Aug. 11, 1989]

§ 2.755 Oral argument before presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, he may allow and fix a time for the presentation of oral argument. He will impose appropriate limits of time on the argument. The transcript

of the argument shall be a part of the record.

§ 2.756 Informal procedures.

The Commission encourages the use of informal procedures consistent with the Act, sections 551-558 of title 5 of the United States Code, and the regulations in this chapter, and with the orderly conduct of the proceeding and the necessity for preserving a suitable record for review.

[35 FR 11459, July 17, 1970]

§ 2.757 Authority of presiding officer to regulate procedure in a hearing.

To prevent unnecessary delays or an unnecessarily large record, the presiding officer may:

(a) Limit the number of witnesses whose testimony may be cumulative;

(b) Strike argumentative, repetitious, cumulative, or irrelevant evidence;

(c) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(d) Impose such time limitations on arguments as he determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

[37 FR 15136, July 28, 1972]

§ 2.758 Consideration of Commission rules and regulations in adjudicatory proceedings.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, any rule or regulation of the Commission, or any provision thereof, issued in its program for the licensing of production and utilization facilities, source material, special nuclear material, or by-product material is not subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding involving initial or renewal licensing subject to this subpart.

(b) A party to an adjudicatory proceeding involving initial or renewal licensing subject to this subpart may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception made for the

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particular proceeding. The sole ground for petition for waiver or exception shall be that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted. The petition shall be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted, and shall set forth with particularity the special circumstances alleged to justify the waiver or exception requested. Any other party may file a response thereto, by counter affidavit or otherwise.

(c) If, on the basis of the petition, affidavit and any response thereto provided for in paragraph (b) of this section, the presiding officer determines that the petitioning party has not made a prima facie showing that the application of the specific Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross-examination or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

(d) If, on the basis of the petition, affidavit and any response provided for in paragraph (b) of this section, the presiding officer determines that such a prima facie showing has been made, the presiding officer shall, before ruling thereon, certify directly to the Commission⁷ for determination the matter of whether the application of the Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding, in the context of this section,

should be waived or an exception made. The Commission may, among other things, on the basis of the petition, affidavits, and any response, determine whether the application of the specified rule or regulation (or provision thereof) should be waived or an exception be made, or the Commission may direct such further proceedings as it deems appropriate to aid its determination.

(e) Whether or not the procedure in paragraph (b) of this section is available, a party to an initial or renewal licensing proceeding may file a petition for rulemaking pursuant to § 2.802.

[37 FR 15136, July 28, 1972, as amended at 56 FR 64975, Dec. 13, 1991; 60 FR 22491, May 8, 1995]

§ 2.759 Settlement in initial licensing proceedings.

The Commission recognizes that the public interest may be served through settlement of particular issues in a proceeding or the entire proceeding. Therefore, to the extent that it is not inconsistent with hearing requirements in section 189 of the Act (42 U.S.C. 2239), the fair and reasonable settlement of contested initial licensing proceedings is encouraged. It is expected that the presiding officer and all of the parties to those proceedings will take appropriate steps to carry out this purpose.

[37 FR 15137, July 28, 1972]

INITIAL DECISION AND COMMISSION REVIEW

§ 2.760 Initial decision and its effect.

(a) After hearing, the presiding officer will render an initial decision which will constitute the final action of the Commission forty (40) days after its date unless any party petitions for Commission review in accordance with § 2.786 or the Commission takes review sua sponte or the decision is subject to the provisions of § 2.764.

(b) Where the public interest so requires, the Commission may direct that the presiding officer certify the record to it without an initial decision, and may:

⁷The matter will be certified to the Commission notwithstanding the provisions of § 2.785.